NO. 10-

IN THE SUPREME COURT OF THE STATE OF MONTANA

SARAH LUNDIN,

Petitioner (Plaintiff),

vs.

MONTANA ELEVENTH JUDICIAL DIST. COURT, THE HONORABLE TED O. LYMPUS,

Respondent.

PETITION FOR WRIT OF SUPERVISORY CONTROL AND STAY PENDING DISPOSITION

Concerning SARAH LUNDIN vs. ANDREA DAVIDSON, EMC INS. CO., and EMPLOYERS MUT. CAS. CO., No. DV-09-949(A), Eleventh Judicial Dist. Court

Lee C. Henning
Rebecca J. Henning-Rutz
Henning, Keedy & Lee, P.L.L.C.
723 Fifth Ave. East, Suite 100
Kalispell, Montana 59901
P: (406) 752-7122
Counsel for Sarah Lundin

Susan Moriarty Miltko
Williams Law Firm, P.C.
P.O. Box 9440
Missoula, MT 59807-9440
P: (406) 721-4350
Counsel for Andrea Davidson

The Honorable Ted O. Lympus
Eleventh Judicial District Court
920 South Main
Kalispell, MT 59901
P: (406) 758-5906
Respondent

James E. Vidal
Matthew K. Hutchinson
Kaufman, Vidal & Hileman, P.C.
P.O. Box 728
Kalispell, MT 59903
P: (406) 755-5700
Counsel for EMC Ins. Co., and Employers Mut. Cas. Co.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES & RULES

SECONDARY SOURCES

I. INTRODUCTORY STATEMENT OF THE CASE

The Petitioner, Sarah Lundin ("Sarah") seeks a writ of supervisory control to vacate the bifurcation granted by the Eleventh Judicial District Court's "Order and Rationale on Pending Motions" (June 16, 2010, App. Ex. 1). Sarah also requests a stay of the district court proceedings pending disposition of this petition.

Sarah sued both the driver who rear-ended her car, Andrea Davidson ("Andrea"), and Sarah's own underinsured motorist (UIM) insurers, EMC Ins. Co., and Employers Mut. Cas. Co. ("EMC") in one action because Andrea carried only $50,000 per person in liability insurance and Sarah had already sustained over $21,000 in past medical expenses.

EMC filed its Answer and a Motion to Bifurcate and Stay the UIM claims simultaneously. The District Court granted EMC's motion (App. Ex. 1).

This Court has previously addressed, by writ of supervisory control, the ramifications of filing one action against both a tortfeasor and UIM insurer. *Dill v. Montana Thirteenth Judicial Dist. Court*, 1999 MT 85, 294 Mont. 134, 979 P.2d 188; *State ex rel. Gadbaw v. Montana Eighth Judicial Dist. Court*, 2003 MT 127, 316 Mont. 25, 75 P.3d 1238.

The District Court's failure to follow *Dill* and *State ex rel. Gadbaw* is error, resulting in the same gross injustices of delays and additional expense that *Dill* and

State ex rel. Gadbaw sought to correct. The District Court's Order is not adequately remediable by appeal.

The Montana Constitution, Art. II, §16, guarantees "... a speedy remedy afforded for every injury of person . . ." and "[r]ight and justice . . . administered without . . . delay."

This Court has approved one unified action in this type of situation. The District Court's Order requires Sarah to prosecute two separate actions, resulting in unwarranted, unjust delays, and the danger of inconsistent verdicts. As a matter of statewide importance, the lower courts require supervision and guidance.

II. STATEMENT OF THE FACTS

Sarah was injured on March 20, 2007, when she was rear-ended by Andrea as Sarah was waiting to exit the parking lot at her child's school in Kalispell. (July 27, 2009, App. Ex. 2, ¶¶1-2; Oct. 5, 2009, App. Ex. 7, ¶¶1-2).

Prior to suit, Farmers insurance advised that Andrea's liability insurance provided coverage of only $50,000 per person. Sarah had accrued over $21,000 in medical expenses and continued to need medical care for her injuries. The parties were unable to settle and Sarah filed suit. Sarah's "Amended Complaint and Jury Demand" (July 27, 2009, App. Ex. 2) included two causes of action arising out of the collision.

The first cause of action alleged negligence and negligence *per se* of Andrea (App. Ex. 2, ¶¶1-7).

The second cause of action alleged that her "damages exceed the bodily injury limits of Defendant Davidson" who was " 'underinsured' as defined under Montana law and in Ms. Lundin's automobile insurance policy with" EMC (*see,* App. Ex. 2, ¶9 and ¶¶8-11). Sarah included this second cause of action to avoid delay and reduce expenses – relying on *Dill*; *State ex rel. Gadbaw*; *Haman v. Maco Ins. Co.*, 2004 MT 44, 320 Mont. 108, 86 P.3d 34; and *Wamsley v. Nodak Mut. Ins. Co.*, 2008 MT 56, ¶33[1], 341 Mont. 467, 178 P.3d 102, that all recognize the propriety and efficacy of one action against both a negligent defendant driver and a plaintiff's UIM insurers.

EMC answered (Aug. 21, 2009, App. Ex. 3), admitting, "it insured Ms. Lundin under an automobile policy the terms of which read as written," and that it "owes Ms. Lundin, as its insured, duties as specified in the applicable policy language and as provided by Montana law ..." (App. Ex. 3, No. 10, p.3)" EMC denied that "Ms. Lundin is an 'underinsured' . . ." (App. Ex. 3, No. 9, P.3). EMC further alleged the

---

[1] *Wamsley* (a conflict of law case), at ¶33, noted: "Also, in Montana an injured party may bring a suit against the tortfeasor and the insurance company in one action when UIM coverages are sought."

UIM claim was "...improvidently consolidated or joined with the underlying tort claim" and should be bifurcated. (App. Ex. 3, p.4).

Simultaneously, EMC filed a motion to bifurcate and stay the UIM claim, (App. Ex. 4, EMC's Brief).

Sarah's Answer Brief (Sept. 8, 2009, App. Ex. 5) principally relied on *Dill* and *State ex rel. Gadbaw*. EMC's Reply Brief (Sept. 25, 2009, App. Ex. 6), like EMC's Brief, relied principally on unreported district court orders – *Lincoln v. Townsend*, No. DV-06-548(A) (Eleventh Judicial Dist. Court, Mar. 12, 2008) and *Rutz v. Shappel*, No. DV-03-245(A) (Eleventh Judicial Dist. Court, Nov. 15, 2006) (App. Ex. 4A, 4B).

After the briefing was complete on EMC's Motion, Andrea answered the Complaint (Oct. 5, 2009, App. Ex. 7), denying liability. Thereafter, Andrea filed a "Notice of Joinder in Co-Defendant's Motion to Bifurcate and Stay and Supporting Memorandum" (Oct. 13, 2009, App. Ex. 8).

On Oct. 23, 2009, Andrea produced her Farmers Insurance Exchange policy which provides bodily injury coverage of $50,000 per person (App. Ex. 9). Andrea also produced her recorded statement, in which she states she did not feel Sarah had any responsibility in this accident. (App. Ex. 9, p. 2).

EMC filed a request for a damage statement. (Oct. 28, 2009, App. Ex. 10). Sarah's "Statement of Damages" (Nov. 4, 2009, App. Ex. 11) listed $21,674.40 in past medical expenses, $484,207.34 in future medical expenses, plus pain and suffering, loss of earning capacity and loss of household services and course of life as determined by the jury.

The District Court did not quickly rule on EMC's motion. There were a series of motions related to the motion to bifurcate (App. Ex. 12-16, various briefs). Andrea noticed the depositions of Sarah and her husband (June 4, 2010, App. Ex. 17-18). Sarah noticed Andrea's deposition (June 9, 2010, App. Ex. 19). In response, EMC moved to quash the depositions and stay the proceedings until the bifurcation motion was decided (June 9, 2010, App. Ex. 17; *see also*, Sarah's Answer Brief, App. Ex. 18, June 14, 2010). This led to the District Court's "Order and Rationale on Pending Motions," June 16, 2010 (App. Ex. 1).

Andrea intends to proceed with discovery and depositions without EMC (July 19, 2010, App. Ex. 22-23). Because of the bifurcation of these actions, Sarah is exposed to multiple discovery, including multiple depositions of the same witnesses and multiple IME's, as well as duplicative proceedings and trials – all relating to the same facts. Accordingly, Sarah petitions this Court for a writ of supervisory control and a stay.

III. STATEMENT OF THE ISSUES

1. Are the issues presented appropriate for resolution by this Court through a writ of supervisory control?

2. Did the District Court err in bifurcating Sarah's claims against her underinsured motorist ("UIM") insurance carrier in light of this Court's prior decisions in *State ex rel. Gadbaw*, *Dill*, and *Haman*?

IV. ARGUMENT

STANDARD OF REVIEW.

A district court may order separate trials when more than one claim has been joined in the same action "in furtherance of convenience or to avoid prejudice . . . " Rule 42(b), M.R.Civ.P. A decision whether to bifurcate is reviewed for an abuse of discretion. *Malta Public School Dist. A v. Montana Seventeenth Judicial Dist.* (1997), 283 Mont. 46, 50, 938 P.2d 1335, 1338; *State ex rel. Gadbaw* at ¶ 12.

District court orders related to trial administration matters, such as stays, are reviewed for abuse of discretion. *Wamsley* at ¶23; *State v. English*, 2006 MT 177, ¶ 50, 333 Mont. 23, 140 P.3d 454; *Eatinger v. Johnson*, 269 Mont. 99, 105-06, 887 P.2d 231, 235 (1994).

ISSUE NO. 1.

The issues presented by Sarah are appropriate for resolution by a writ of supervisory control.

A. The Law Relating to Supervisory Control.

The Supreme Court has "general supervisory control over all other courts," MT Const. Art. VII §2(2), and may issue and determine necessary and appropriate writs, MT Const. Art. VII §1, §3-2-202(2) M.C.A., Rule 14 M.R.A.P.

Rule 14(3) M.R.A.P. specifies, in part, this Court "may, on a case-by-case basis, supervise another court by ... a writ of supervisory control" – "an extraordinary remedy" justified "when urgency or emergency factors exist making the normal appeal process inadequate, when the case involves purely legal questions, and when one or more of the following circumstances exist:" the "other court is proceeding under a mistake of law and is causing a gross injustice," or "constitutional issues of state-wide importance are involved. . . ." *See, e.g., Plumb v. Montana Fourth Judicial. Dist. Court*, 279 Mont. 363, 368-70, 927 P.2d 1011, 1014-16 (1996)(historical analysis of both approaches and their interrelationship); *J.C. v. Montana Eleventh Judicial Dist. Court*, 2008 MT 358, ¶¶ 12-13, 346 Mont. 357, 197 P.3d 907 and cases cited therein.

A party may seek a writ of supervisory control at any time. Rule 14(5)(a) M.R.A.P.

A.1 **Mistake of Law**. "Supervisory control is appropriate when a district court is proceeding under a mistake of law and in so doing is causing a gross injustice for which an appeal is not an adequate remedy." *Safeco Ins. Co. v. Montana Eighth Judicial Dist. Court,* 2000 MT 153, ¶ 14, 300 Mont. 123, 2 P.3d 834; *State of Montana, ex rel. McGrath v. Montana Twenty-First Judicial Dist. Court,* 2001 MT 305, ¶10, 307 Mont. 491, 38 P.3d 820; *Plumb*, 279 Mont. at 368-370, 927 P.2d at 1014-1016.

Abuse of discretion is considered a "mistake of law" that may be a basis for supervisory control, if there is no adequate remedy by appeal. *Malta Public School Dist. A*, 283 Mont. at 53, 938 P.2d at 1339-40; *State ex rel. Gadbaw*, at ¶17.

As expressed in *Truman v. Montana Eleventh Judicial Dist. Court*, 2003 MT 91, ¶15, 315 Mont. 165, 68 P.3d 654, it is well settled that:

> . . . if the district court proceeded based upon a mistake of law, the course of discovery, the cost of preparation, and the trial itself would be adversely affected. *Plumb*, 279 Mont. at 370, 927 P.2d at 1015-16. Moreover, settlement negotiations would be hindered, any verdict reached would be questionable, and subsequent litigation and additional costs were inevitable. *Plumb*, ... Based on these considerations, we concluded that a remedy by appeal would be inadequate and a speedy remedy by supervisory control was necessary to serve justice. *Plumb*, ...

Supervisory control is proper to clarify the law and to promote judicial economy. *See, e.g., State ex rel. Eccleston v. Montana Third Judicial Dist. Court*, 240 Mont. 44, 48, 783 P.2d 363, 366 (1989)(" ... supervisory control is appropriate in this case for the purpose of clarifying the law and in the interests of judicial economy").

Judicial economy promoted by supervisory control may involve avoidance of needless or extended litigation. *See, State ex rel. Great Falls Nat. Bank v. District Court of Eighth Judicial Dist.*, 154 Mont. 336, 340, 463 P.2d 326, 328 (1969); *Amsterdam Lumber, Inc. v. District Court of Eighteenth Judicial Dist.*, 163 Mont. 182, 516 P.2d 378, 381, (1973), *superceded on other grounds, In re Marriage of Gahr*, 212 Mont. 481, 689 P.2d 257 (1984); *State ex rel. Buttrey Foods, Inc. v. Dist. Court of Third Judicial Dist.*, 148 Mont. 350, 420 P.2d 845, 847 (1966); *First Bank v. Dist. Court of Eighth Judicial Dist.*, 240 Mont. 77, 84, 782 P.2d 1260, 1264 (1989); *Sportsmen For 1-143 v. Montana Fifteenth Judicial Dist. Court*, 2002 MT 18, ¶5, 308 Mont. 189, 40 P.3d 400 (" . . . may be used to prevent extended and needless litigation").

A.2 **Statewide Issue**. Supervisory control may be appropriate when a constitutional question of major statewide concern is raised, *Plumb*, 279 Mont. at

368-70, 927 P.2d at 1014-16; Rule 14, M.R.A.P. As discussed above, supervisory control may be necessary to clarify the law or promote judicial economy.

B. Supervisory Control Is Appropriate and Necessary Because the District Court Was Acting under a "Mistake of Law."

In *Dill* and *State ex rel. Gadbaw*, this Court dealt with automobile injury actions commenced against both the tortfeasor and UIM carrier as defendants. In both cases supervisory control was exercised. In both cases this Court recognized that mistakes of law, which required plaintiffs to proceed with UIM claims at unwarranted additional expense and delay, were gross injustice, necessitating correction. Both cases found appeal an inadequate remedy.

Sarah faces the same injustices as in *Dill* and *State ex rel Gadbaw*. If the case proceeds as mistakenly directed by the District Court, she will be subject to unwarranted additional expense and delay, resulting in gross injustice. As in *Dill* and *State ex rel Gadbaw*, appeal is not an adequate remedy.

Dill and *State ex rel. Gadbaw*, irrefutably demonstrate that the issues presented by Sarah are appropriate for resolution by writ of supervisory control.

Additionally, supervisory control will promote judicial economy by eliminating duplicative discovery and trials, extinguish the danger of inconsistent verdicts, and clarify the law[2].

C. Supervisory Control Is Necessary for the Uniform and Speedy Administration of Justice Throughout the State.

The Montana Constitution, Art. II, §16, guarantees "... a speedy remedy afforded for every injury of person . . ." and "[r]ight and justice . . . administered without . . . delay."

This Court's pronouncements that an injured party may sue a tortfeasor and the UIM insurer in one action, *e.g., Wamsley* at ¶33[3], have little effect if each judge pursues different interpretations of these cases. Justice and injustice become a function of locality, imperiling the right of all injured persons to prompt and effective redress.

Dill, *State ex rel. Gadbaw*, *Haman* and *Wamsley* are clearly premised on the speedy administration of justice that should be applied, evenhandedly and with clarity, by the Montana district courts.

---

[2] While it seems clear to Sarah that *Dill* and *State ex rel. Gadbaw* are controlling, the District Court had a different view of the clarity of the law.

[3] *Wamsley* identified such an action as an important and distinctive feature of Montana law.

The Court's decisions in these cases address the issues, implicitly and explicitly, that are foremost in any decision to bifurcate, namely, "convenience" and the avoidance of "prejudice." In various cases, this Court has been presented with a variety of arguments by UIM insurers as to why a unified action should not be allowed, and this Court did not consider such unified actions inconvenient or prejudicial. Additionally, the principal potential prejudice – evidence of liability insurance (Rule 411 M.R.Evid.) – was specifically addressed and dismissed in *Dill*. UIM claims should not be bifurcated or stayed based on factors inherent in any unified claim, such as potential prejudice relating to insurance, when this Court has found unified claims appropriate.

The vast majority of Montanans routinely travel by automobile and thus are potential automobile injury litigants. The civil matters in the courts include large numbers of such injury cases. Many drivers and passengers have UIM coverages. The need for uniformity and clarity in the manner in which district courts address such issues is obvious.

Supervisory control is necessary to provide further guidance to the district courts concerning avoiding the injustices, delays and uncertainties, arising from an improper bifurcation and to assure Sarah's right to speedy justice.

ISSUE NO. 2.

The district court erred in bifurcating Sarah's UIM claim in light of *State ex rel. Gadbaw*, *Dill* and *Haman*.

Generally, in either a unified action or in separate actions, the plaintiff bears the burden of proof against both the tortfeasor and the UIM insurance carrier. The UIM insurer may assert any defenses, such as contributory negligence, that the tortfeasor could assert against the plaintiff. 7A Am.Jur. 2d Automobile Insurance §620.

The essence of the District Court's rationale for bifurcating the UIM claim was that:

> The **determining thing** in deciding whether bifurcation of a UIM claim from an underlying personal injury claim **is whether liability is contested** . . . Liability is contested and, because it is, the Court agrees with the reasons of the District Court in the *Rutz* and *Lincoln* cases that **in such a situation Rule 411. M.R.Evid. applies** and bifurcation is appropriate (emphasis added). Order p. 2 (App. Ex. 1).

The District Court intertwined two ideas. First, contested liability is the touchstone of bifurcation of UIM claims. Second, Rule 411 M.R.Evid., in effect, makes it impossible to try a unified case without undue prejudice. The District Court cited no authority of this Court that supports either idea. The unreported non-precedential

district court cases of *Rutz* and *Lincoln* (App. Ex. 4A, 4B) add little or no elaboration to the District Court's reasoning.

A. Contested Liability.

This Court has never suggested that contested liability is the "determining" factor for bifurcation. Such a concept is anathema to the unified action that this Court has embraced. The District Court's reasoning renders a unified action illusory, leads to absurd results, and makes bifurcation of a UIM claim unavoidable through mere pleading. The vast majority of defendants, as a matter of course, deny or contest liability in their answers. According to the District Court's logic, unless the tortfeasor admits liability, bifurcation is both appropriate and necessary to avoid prejudice, based on only an answer. The following consequences result: Bifurcation becomes the rule, and a unified action is a limited exception. The most ordinary of pleadings necessitates bifurcation because of a suggestion of some issue of liability – like the UIM insurer asserting contributory negligence. Artful pleading, which needlessly consumes the time of courts and litigants, is promoted. For example, in this case EMC moved for bifurcation simultaneously with its Answer. Sarah and EMC completed briefing to the District Court before Andrea answered. The case was

bifurcated before Sarah had the opportunity to take Andrea's deposition testimony on liability.[4]

Given all the factors that make "one action" reasonable:

- commonality of facts,
- commonality of discovery,
- commonality of defenses by the tortfeasor and UIM carrier with respect to both liability and damages
- avoidance of delay and duplication
- binding disposition of issues as to all parties in one proceeding, and
- avoidance of inconsistent verdicts,

the District Court's view produces the absurd result that none of these benefits and advantages are available, except in extremely rare cases.

Nothing in the jurisprudence of this Court supports, suggests or requires a unified action of such narrow proportions as to be effectively non-existent. Nothing from this Court suggests a unified action is so anaemic that it cannot survive the filing of a routine and usual answer.

---

[4]This has the curious result that given Andrea's recorded statement that Sarah was not at fault, Sarah did not even have the opportunity to develop evidence that shows there is no contest as to liability.

B. Rule 411 M.R.Evid.

The District Court was equally mistaken in its second idea concerning Rule 411 M.R.Evid., namely that the Rule applies in a case of contested liability and therefore bifurcation is required. Embedded in this notion is the jaundiced conclusion that a plaintiff may bring a unified action, but the district courts are inherently unable to try such cases against both defendants to completion without undue prejudice.

This Court has never taken so restrictive a view. Instead, this Court stated in *State ex rel Gadbaw* at ¶26:

> The notion that the mere mention of insurance can move a jury to ignore the law and award a windfall to the plaintiff is an ancient myth unsupported by any empirical data which has been brought to this Court's attention. Common sense dictates that the opposite is true. Jurors concerned that an individual might not have insurance are more likely to protect that individual and his or her assets from damages which, unless personal to the individual, often seem abstract and theoretical. For example, in *Million v. Rahhal* (Okl. 1966), 417 P.2d 298, 300, cited in *Sioux v. Powell* (1982), 199 Mont. 148, 153, 647 P.2d 861, 864, the Oklahoma court stated:
>
> > 1243*1243 'The prejudice created by a showing of the absence of insurance is likely to be greater than when the existence of insurance coverage is shown. . .

Rule 411 M.R.Evid. does not make all evidence of insurance inadmissible. First, the rule refers only to insurance against liability (third party insurance), not

other forms of insurance, such as UIM coverage (first party insurance). Second, the rule only renders inadmissible evidence of liability insurance offered to prove negligence. Evidence of liability insurance may be admissible for "another purpose."

Evidence of Sarah's UIM insurance is not barred by 411 M.R.Evid., as *Dill* at ¶21 states:

> ¶ 21 Rule 411, M.R.Evid., is entitled, "Liability insurance." It provides:
>
> > Evidence that a person was or was not insured against liability is not admissible upon the issue of whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence *of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.*
>
> (Emphasis added). Rule 411, M.R.Evid., by its terms, applies only to liability insurance and therefore does not preclude the admissibility of the underinsured motorist policy . . .

Evidence of Andrea's liability insurance is both relevant and admissible if offered for "another purpose," unrelated to whether Andrea "acted negligently or otherwise wrongfully," *i.e.*, demonstrating Andrea was an underinsured motorist for the purposes of Sarah's UIM policy. *See, Dill* at ¶22; *State ex rel Gadbaw* at ¶25 ("It is clear from our decision in *Dill* that Rule 411, M.R.Evid, does not prohibit the introduction of evidence of insurance when evidence is not offered for the purpose of establishing negligence or liability").

The district courts are not charged to exclude all evidence of insurance. Rather they are responsible for conducting fair trials that avoid undue prejudice. The Montana courts are sufficiently skilled, and have the appropriate tools to fairly try these types of cases in one action, allowing plaintiffs to present the evidence necessary to establish their claims, while avoiding undue prejudice.

V. CONCLUSION

The District Court's mistakes of law concerning the unified action and bifurcation have resulted in precisely the consequences discussed in *Truman* at ¶15: adverse affects on the course of discovery, the cost of preparation for trial and of the trial itself, and the course of settlement negotiations, as well as inevitable subsequent litigation, additional costs, and heightened dangers of inconsistent verdicts.

At the urging of EMC, the District Court wielded a meat axe to chop off the UIM claim at a preliminary stage in the proceeding. EMC's efforts to avoid the first depositions noticed led to the District Court's Order. There was no reason to insulate EMC, by bifurcation, from discovery, scheduling orders or pre-trial orders applicable to Sarah and Andrea. Notions of judicial economy and convenience of the parties demonstrate that bifurcation was mistakenly granted, resulting in gross injustices not remediable by appeal.

To allow this case to proceed by virtue of the mistakes of law made by the District Court needlessly wastes further judicial time, requires the injured party to participate in duplicative depositions and IMEs, results in the danger of inconsistent verdicts, delays justice and costs the injured party money. Neither can the delay inherent in the District Court's Order be made good. Sarah is entitled to the speedy administration of justice. An appeal cannot adequately redress the gross unfairness of this situation.

A writ of supervisory control is appropriate and necessary.

VI. PRAYER

The Petitioner respectfully requests that:

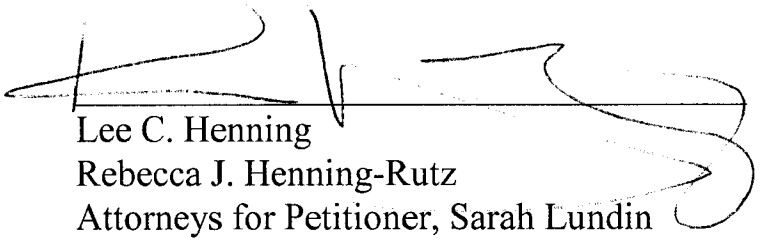
1. This Court assume supervisory control over the District Court, and require that court to vacate its Order of June 16, 2010; and.

2. This Court order a stay of further proceedings in the District Court pending disposition of this Petition; and

3. After due consideration, this matter be remanded for further proceedings consistent with this Court's Order.

Respectfully submitted this 28th day of July 2010.

HENNING, KEEDY & LEE, P.L.L.C.



Lee C. Henning
Rebecca J. Henning-Rutz
Attorneys for Petitioner, Sarah Lundin

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Petition complies with Rule 11 of the Montana Rules of Appellate Procedure. The Petition is double-spaced and printed in Times New Roman proportionately spaced 14-point typeface with a total word count of less than 4,000 (not including the portions identified in Rule 11(4)(d) as "exclusions").

DATED this 28th day of July, 2010.

HENNING, KEEDY & LEE, P.L.L.C.

Lee C. Henning
Rebecca J. Henning-Rutz
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition was served by U.S. Mail, postage prepaid, on the following this 26th day of July, 2010.

Hon. Ted O. Lympus
District Judge, Department 1
800 S. Main St.
Kalispell MT 59901

James E. Vidal
Matthew K. Hutchinson
Kaufman, Vidal & Hileman, P.C.
P.O. Box 728
Kalispell, MT 59903

Susan Moriarty Miltko
Williams Law Firm, P.C.
P.O. Box 9440
Missoula, MT 59807-9440

Keirsten Giles